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NOTES ON CERTAIN AMENDMENTS TO THE CODES.

The following notes refer to the sections of the Codes, amended, revised, added, or repealed, as recommended by Hon. John F. Davis, Commissioner for the Revision and Reform of the Law, and are taken from the reports to the Legislature by the Assembly Committee on Revision and Reform of Laws:

CIVIL CODE.

SECTION.

- 51, 52. The statute of 1897, page 137, relating to the rights of persons, is codified in the two sections above named.
- 53, 54. The statute of 1893, page 220, relating to the rights of persons, is codified in the sections above named.
58. The provisions of this section are contained in the present section 82. The section is therefore unnecessary.
60. The change consists in the insertion of the word "mongolians" after the word "negroes."
68. The change consists in the substitution of the word "others" for "other" before "than"; the substitution of "a party" for "the parties" after "than"; and the substitution of "it" for "that marriage" after "invalidate." The meaning of the section is unchanged.
- 79a (79½). The change consists in the omission of the words "procuring a license and" after "to," thus requiring a license in every case, but leaving the mode of celebrating the marriage as at present. The section is renumbered 79a.
84. The design of the amendment is to make the rule declared in this section applicable to all judgments adjudging marriage null, the present section applying only to cases where a marriage is annulled *on the ground that a former husband or wife was living.*
226. The first two sentences of this section have been recast with the design of making the proceeding for adoption judicial, thereby supporting it by the same intendments which are indulged in favor of other proceedings conducted in courts of record.
227. The change consists in the substitution of the word "court" for the word "judge," and in the addition of the last sentence, said sentence being added for the purpose of making it clear that the papers constituting part of the adoption, or of the proceeding therefor, must be filed and preserved by the clerk.
- 242, 243, 244, 245. The provisions of the above sections, relating to guardian and ward, are controlled by sections 1747, 1758, and 1793 of the Code of Civil Procedure. They are, therefore, unnecessary and misleading.
246. The change consists in the addition of subdivision 4, which is a codification of the statute of 1873-4, page 297, relating to the care of orphan and abandoned children. The penal provisions of that act are, however, omitted as they do not properly find a place in this Code.
247. The subject-matter of this section is provided for in section 1753 of the Code of Civil Procedure.
- 248, 249. The provisions of these sections are included in sections 1753 and 1770 of the Code of Civil Procedure.
258. This section, which prescribed the mode of placing insane persons in the asylum, has been supplanted by later legislation (see statute of 1897, page 311, relative to the establishment of a lunacy commission, and Political Code, sections 2136 to 2199).
- 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276. These sections codify the statute of 1875-6, page 842, relative to masters and apprentices, as amended in 1880, page 28, the old chapter being repealed and the provisions of the acts above referred to substituted in place thereof. In this codification section 1 of the statute has been made section 264; sections 2 and 7, 265; sections 3, 4, 5, and 12, 266; section 6, 267; section 8 and the latter part of section 9, 268; the first clause of section 9 and all of section 10, 269; section 11, 270; section 13, 271; section 14, 272; section 15, 273; sections 16 and 17, 274; section 19, 275; section 20, 276. It will be

CIVIL CODE—Continued.

SECTION.

- 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276.—*Continued.*
- observed that section 18 of the statute has been omitted. It purports to make the parties to an indenture of apprenticeship liable to the master for any breach thereof. The theory of the statute is that the contract of apprenticeship is not made by the minor, but by his parent or guardian. If such parent or guardian is made personally liable on the contract, a parent will rarely, and the guardian almost never, enter into it. It seems sufficient that such parent or guardian be made answerable for the cost of the proceeding brought by the master to be released from the indenture, as provided for in section 274. The master on his part is not absolutely bound, because he may, if he wishes to remove from the state, or to quit his trade, or business, apply to be released from his contract, and he may take like action whenever the apprentice is guilty of neglect, refusal to do his duty, or gross misbehavior. These considerations seem to furnish good reason for the omission of the section.
299. The change consists in the insertion of the words "other than the county in which its original articles of incorporation are filed" after "state."
302. The change consists in the omission of the words "and the right to vote determined" after "given." The right to vote is controlled by section 307.
304. The provisions of the present section, declaring that no by-law or any amendment thereof shall take effect until copied in the book of by-laws, is amended so as to permit by-laws and amendments thereof, which have been duly passed, to be treated as valid and enforceable against the corporation and persons having notice thereof, regardless of whether or not they have been copied into the proper book. It has often happened that by-laws have been published and generally acted upon by the corporation, and by others, and then their effect has been sought to be avoided on account of the failure of the proper officer to perform his duty of copying them as the Code directs. The change consists in the addition of the last sentence.
309. The change consists in the omission of the words "nor must they divide, withdraw, or pay to the stockholders, or any of them, any part of the capital stock," where those words first occur, and in the omission of the words "in the event of its dissolution," after "thereof." The reason for the omission of the words first above alluded to is that by some clerical error they occur twice in the section. The words "in the event of its dissolution" are omitted because their presence makes it impossible to enforce the liability against the directors unless the corporation is first dissolved, which could not have been the intention of the legislature.
310. The amendment, while it authorizes the removal of the whole board of directors by a two-thirds vote of the members or stockholders, denies the power to remove less than the whole number by such vote. The reason for this is that by the system of cumulative voting sanctioned by section 307, a minority may obtain representation in the board of directors; if so, a director elected to represent a minority of one third ought not to be removed by the subsequent vote of the other two thirds, and the system of cumulative voting and minority representation thus made ineffective. The first sentence only is changed.
311. By the amendment proposed the holders of a majority of the stock, though their number is less than three, are authorized to apply to the justice to issue a warrant for an election. The change consists in the addition of the last sentence.
312. The change consists in the substitution of the words "superior court" in place of "district court," and in the omission of the words "bona fide" before "stockholder." For the purposes of election, a person appearing upon the books of the corporation to be a stockholder should be permitted to vote, and election officers should not be vested with authority to deny such a stockholder the right to vote, or to claim that for some reason he is not a bona fide stockholder. (See *Smith vs. S. F. & N. P. Ry. Co.*, 115 Cal. 584.)
314. The design of the amendment is to extend the provisions of the section to all elections howsoever authorized, and for this purpose the words "by law" are inserted after "appointed," "in" is omitted after "appointed," and "or otherwise" are inserted after "by-laws."
315. The change consists in the substitution of the words "superior court of the county" for "district court of the district."
322. The change consists in the substitution of the language of the first sentence of Section 3 of Article XII of the Constitution in place of the first sentence of the present section. As the section now stands, it is believed to be unconstitutional. (See *Larrabee vs. Baldwin*, 35 Cal. 155.) The words "an equal share" are substituted for "his proportion."

CIVIL CODE—Continued.

SECTION.

323. The change consists in the addition of the words "but any certificate issued prior to full payment must show on its face what amount has been paid thereon," the object being to require a certificate issued prior to full payment to show the amount paid thereon.
325. The amendment is designed to make it clear that shares of stock standing in the name of a married woman are presumed to be her separate property, and that they may be dealt with by her as such, in the absence of proof and notice to the contrary.
360. Section 363, approved March 5, 1899, is added to section 360, to the end that there shall not, as now, be two sections numbered 363.
361. Repealed, and the matter therein added to section 587a.
388. This section as it now stands applies only to corporations authorized to receive tolls, and is probably unconstitutional as creating a special law where a general law may be made applicable. See *Krause vs. Durbrow*, 19 Cal. Dec. 93. The amendment makes the section applicable to all corporations.
391. The amendment makes the section applicable to persons and companies as well as to corporations.
392. The amendment makes applicable to an execution sale of franchises the law of redemption applicable to other sales of real property.
393. Omits the words "upon which the taxes are paid," that having apparently no relevancy to the section.
399. This section, which purports merely to designate the place in the Code of Civil Procedure where the dissolution of corporations is provided for, does not state any rule of law and constitutes but an imperfect index to the provisions referred to.
400. The change consists in the substitution of the word "a" for "such."
401. The design of the amendment is to require the written assent of stockholders representing two thirds of the capital stock instead of permitting two thirds in number of the stockholders to act by their written consent. The change consists in the substitution of the words "two thirds of the members or of stockholders representing two thirds of the capital stock" in place of that number of stockholders or members.
- 403, 404. The bill adds a new chapter, entitled "General Provisions Affecting Corporations." Said chapter is made up of the old section 403, which now stands in a chapter entitled "Extension and Dissolution of Corporations," and of the matter now in section 384, which now stands in a chapter entitled "Examination of Corporations." The object of the rearrangement is the placing of the sections under a more appropriate chapter heading.
- 405, 406, 407. These sections codify the statute of 1880, page 111, and section 1, statute of 1880, page 21.
- 408, 409, 410. These sections codify the statute of 1901, page 108.
428. The change consists in the insertion of the words "at once" before "reinsuring."
- 431, 452. Section 431, which deals with the amounts to be received by life insurance companies, now stands in a chapter entitled "Fire, Marine, and Title Insurance Corporations." It is transferred to a more appropriate chapter, and numbered 452.
448. This section exempts accident insurance companies from stamp duties, but as there are no such duties under the law as it now stands, the section is unnecessary.
- 452a, 453. The statute of 1873-4, page 745, as amended by the statutes of 1880, page 25, and 1901, page 6, relating to mutual benefit associations, is codified in the above sections, and a new chapter, entitled "Mutual Benefit and Life Associations," is added, to consist of sections 452a and 453.
- 453a, 453b, 453c. The statute of 1875-6, page 689, concerning the powers of underwriters, as amended by the statute of 1897, page 223, is codified in the sections above named, a new chapter being added, entitled "Corporations to Discover Fire, and to Save Property and Human Life From Destruction Thereby," to consist of sections 453a, 453b, and 453c.
- 453d, 453e, 453f, 453g, 453h, 453i, 453j, 453k, 453l, 453m, 453n, 453o, 453p. The above sections are a codification of the statute of 1891, page 126, relating to life, health, accident, and annuity or endowment insurance on the assessment plan. They are placed in a new chapter, entitled "Life, Health, Accident and Annuity or Endowment Insurance on the Assessment Plan."
- 465a. This section is a codification of the statute of 1893, page 208, relating to the operation of railroads.

CIVIL CODE—Continued.

SECTION.

468. The amendment consists in codifying and adding to the section the provisions of the statute of 1880, page 43, to compel the operation of railroads, and of the statute of 1897, page 5, to provide for the management and operation of railroads above certain elevations.
- 473a. Section 2 of the statute of 1880, page 21, authorizing railway and other corporations organized under the laws of this state or of any state or territory of the United States to do business in this state, on equal terms, is codified in this section.
481. The amendment consists in the substitution of the word "its" for "their," and the substitution of "it" for "they," thus correcting errors of grammar.
489. Section 11 of the statute of 1880, page 47, defining the powers of the board of railroad commissioners, is substituted in place of the present section 489. The section has been inoperative since the adoption of the Constitution of 1879.
493. The change consists in the substitution of the words "section four hundred and ninety-two" in place of "act."
494. In 1899 a section relating to the sale of railroads was added to the Code, and numbered 494. In 1903 a new section was added, also numbered 494, and clearly intended to supersede the old section 494. Accordingly, it is thought advisable to repeal the earlier section.
513. The change consists in the omission of the words "they were" before the word "before." The omission does not change the meaning of the section.
514. The change consists in the omission of that part of the section excepting from its operation the counties of Butte, Del Norte, Humboldt, Klamath, Plumas, and Sierra.
517. The section as it now stands authorizes the toll-gatherer to prevent from passing through his gate persons leading or driving animals or vehicles subject to toll. The form of the section has been changed to express what was doubtless originally intended by the legislature.
518. The change consists in the insertion of the words "or any vehicle or animal" after "passenger."
522. The change consists in the substitution of the word "its" in place of "their," thus correcting an error of grammar.
524. The statute of 1897, page 191, authorizing municipal corporations to construct paths and roads for the use of bicycles and other horseless vehicles, is codified in this section.
528. The change consists in the insertion of the words "or other governing body having authority in that behalf," after "supervisor."
529. The change consists in the insertion of the words "or other governing body having authority in that behalf," after "supervisors."
530. The change consists in the insertion of the words "or other governing body having authority in that behalf," after "supervisors."
- 536, 537, 538, 539, 540. The change consists in the insertion of the words "or telephone" after the word "telegraph," thus including telephone companies within the operation of the above sections.
549. The change consists in the omission of the two sentences following the word "charge," which are now a part of the section, said sentences having been superseded by the provisions of the Constitution of 1879, providing for the mode in which water rates shall be fixed.
550. This section is an expression of the constitutional provisions found in the Constitution of 1849, respecting the right of corporations to use streets for laying water pipes.
551. The design of the amendment is to better express the purpose of the present section and to remove the objections that it may be unconstitutional in investing the supervisors with an arbitrary power to require or not require bridges, and to supply the present defect in not providing any means of coercing the performance of the duty created.
- 583b. This section is a codification of the statutes of 1893, page 183, and 1897, page 27, the only change made being in the provisions concerning the person who is to make the report. The original statute provided that the report should be made by the president or secretary. It has been thought best to impose the duty upon a single officer, so that it cannot be evaded by one officer, by his saying that it was the duty of the other, or that he had supposed the other had, or would, perform it.
- 586, 587, 587a. Revises the whole of Title XI of Part IV of Division First of the Civil Code, respecting mining corporations. Sections 586 and 587 are not changed, but simply reenacted. Section 587a contains substantially the matter now in section 361, the word "corporations" being substituted for "companies," and the words "and to cause notice of the time and place fixed for such meeting to be mailed to each stockholder of each of such corporations at his last known place of residence or business at least ten

CIVIL CODE—Continued.

SECTION.

- 586, 587, 587*a*.—*Continued.*
 days before the time fixed for such meeting" being inserted. The matter added is designed to provide the mode in which notices may be served on stockholders.
- 588, 589, 590. The statute of 1873-4, page 866, as amended in 1880, page 34, and 1897, page 38, is codified in the above sections, the only substantial change made being in the omission of the proviso in section 1 of the amendatory act of 1897, limiting its provisions to corporations "whose stock is listed and offered for sale at public exchange." The provisions of the part of the section omitted are unconstitutional. (See *Johnston vs. Tautphaus*, 127 Cal. 604.)
- 591, 592, 592*a*, 592*b*, 592*c*, 592*d*, 592*e*. Adds a new title to the Code, designated "Corporations for the Formation of Chambers of Commerce, Boards of Trade, Mechanics' Institutes, and other Kindred Organizations," the matter contained in said chapter being a codification of the statute of 1865-6, page 469, as amended in 1867-8, page 5, and 1885, page 76, respecting chambers of commerce.
- 607, 607*a*, 607*b*, 607*c*, 607*d*, 607*e*, 607*f*, 607*g*. The subject-matter of the above sections is taken from the statute of 1873-4, page 499, as amended in 1901, page 285, and 1903, page 69—to prevent cruelty to animals; the statute of 1875-6, page 830, relating to the incorporation of societies for the prevention of cruelty to children; the statute of 1877-8, page 812, for the protection of children; and the statute of 1877-8, page 813, relating to children. Section 1 of the act of 1875-6, page 830, is codified in section 607. Subdivision 7 of section 2 of the same act is codified in section 607*a*, and section 3 in section 607*b*. Section 607*c* is a codification of section 4 of the act of 1875-6, page 830, and section 4 of the act of 1873-4, page 499. Section 5 of the act of 1875-6, page 830, is codified in section 607*d*; and section 14 of that act, as amended in 1903, page 69, and section 5 of the act of 1877-8, page 813, are consolidated and codified in section 607*e*. Section 5 of the act of 1873-4, page 499, as amended in 1901, page 285, is codified in section 607*f*, and section 3 of the act of 1877-8, page 812, is codified in section 607*g*, with the exception of subdivision 5 thereof, which is an addition thereto, to cover the matters referred to in the act of 1877-8, page 813.
- 629, 630, 630*a*, 631, 632. The purpose of the amendment is to make the above sections applicable to electric as well as to gas-light corporations. To accomplish this, the following changes have been made: In section 629 the words "or direct or primary wire" are inserted after "main," and the words "or electricity" are inserted in two places after "gas." Section 630*a* is a new section, to extend the provisions of the chapter "Electric Light Companies," and provide for advances similar to those made to gas companies by subscribers. In section 631 the words "any owner or manager of gas or electric works, or agent of such owner or manager, exhibiting written authority, signed by such owner or manager, or" are inserted at the beginning of the section; the words "or electric light" are inserted after "gas"; the words "or electricity" are inserted after "gas," and the words "or electric meters" are inserted after "meters." In section 632 the words "or electricity" are added after "gas" in three places, and the word "wires" is inserted after "pipes."
- 638*a*. This section is a codification of section 19 of the statute of 1893, page 229.
- 648½. This section is no longer necessary: the statute referred to therein, to wit: that of 1877-8, page 955, having been repealed. (Stats. 1897, p. 243.)
- 653*a*. This section is a codification of that part of the statute of 1877-8, page 883, defining cooperative corporations, and the section is placed in a new title designated "Coöperative Business Corporations." That part of the statute declaring that the by-laws may provide for the number of votes to which each shareholder shall be entitled is omitted for the reason that it is special legislation, and probably unconstitutional within the decision in *Krause vs. Durbrow*, 127 Cal. 681.
- 653*b*, 653*c*, 653*d*, 653*e*, 653*f*, 653*g*, 653*h*, 653*i*, 653*j*, 653*k*, 653*l*. The statute of 1895, page 221, is codified in the above sections, which are placed in a title designated "Coöperative Business Associations."
793. The words "in the district court," where they occur in the present section, are omitted.
822. A clerical error is corrected by inserting "has" after "property."
- 842, 843. The statute of 1889, page 202, relating to the protection of owners of ditches and flumes, is codified in the above sections. Section 3 of the statute is not codified for the reason that any matter in it which should be retained is fully covered by the general rules of law.

CIVIL CODE—Continued.

SECTION.

970. The amendment consists in the substitution of the words "by or under authority of the laws of the United States" after "steamers," in place of the words "under authority of the acts of congress, approved August thirteenth, eighteen hundred and fifty-two, and April twenty-ninth, eighteen hundred and sixty-four."
993. The change consists in the addition of the words "and the person transferring it may transfer with it the right of using the name under which the business is conducted." The purpose of the amendment is to authorize the transfer of the right of using the name with the transfer of the good-will of the business.
1096. Section 1 of the statute of 1873-4, page 345, relating to conveyances of real estate, is codified in the above section. The rest of the statute should be added to section 4236 of the Political Code.
1161. The change consists in the substitution of the words "the person executing the same in behalf of the corporation" in place of "its president or secretary." The reason for the amendment is that an instrument may be executed on behalf of a corporation by an officer or person other than its president or secretary, when authorized by its board of directors. The section as it now stands appears to sanction its execution by those officers only.
1181. The change consists in the substitution of the word "township" for "district" before "for."
1185. The change consists in the substitution of the words "person who executed it on behalf of the corporation," in place of "president or secretary of such corporation." (See note to section 1161.)
1190. The change consists in the substitution of the words "the person (or officer) who executed the within instrument on behalf of the corporation therein named," in place of the words "the president (or the secretary) of the corporation that executed the within instrument." (See note to section 1161.)
1202. The change consists in the substitution of the word "superior" for "district," before "court."
1203. The change consists in the substitution of the word "superior" in the place of "district," before "court."
1218. This is a new section. It is self-explanatory.
1263. The change consists in the insertion of the words "and if the claimant is married the name of the spouse," after "family."
- 1269a, 1269b, 1269c. The statute of 1873-4, page 582, relating to homesteads belonging to insane persons, is codified in the above sections, which are placed in a new chapter, entitled "Alienation of Homesteads of Insane Persons."
1275. The change consists in the insertion of the word "that" before "corporation," and in the insertion of the words "counties, municipal corporations and corporations" after "that." The amendment in substance incorporates into the section the provisions of the act of 1881, page 2, authorizing the several counties, cities and counties, cities and towns, of the state, to receive property by gift, bequest and devise.
1276. The change consists in the substitution of the words "the same" in place of "his name" after "sign." The purpose of the amendment is to avoid the strict construction given to subdivision 4 in Estate of Walker, 110 Cal. 387.
1285. The change consists in the insertion of all the matter after the word "chapter," the purpose being merely to state what has always been understood to be the rule in this state respecting bequests of personal property, viz: that it may be bequeathed in accordance with the law of the testator's domicile.
1300. The change consists in the omission of the word "unmarried" before "women." The purpose of the amendment is to apply the same rule to wills executed by married and unmarried women with respect to the revocation by subsequent marriage.
1306. The change consists in the addition of the last sentence, and is intended to change the rule of Smith vs. Olmstead, 83 Cal. 582.
1307. The change consists in the addition of the last sentence. (See note to preceding section.)
1310. The provisions of this section are new, and are limited to cases where a conviction for murder in the first degree has been had.
1327. The change consists in the addition of the clause following the word "intention," and provides that the words in a will need not be taken in a technical sense, if it appears to have been drawn by the testator, and that he was unacquainted with such sense.

CIVIL CODE—Continued.

SECTION.

1364. The change consists in the transposition of the words "within four years after the devisor's death," by striking them out at the end of the section, where they now appear, and placing them after the word "unless."
1376. The change consists in the addition of the clause following the word "state," and has been rendered necessary by the proposed amendment to section 1285.
1386. A clerical error is corrected by renumbering the subdivisions; certain errors of grammar are corrected. The words "or grandchild" are inserted after "child"; the words "nor the child or grandchild of a deceased brother or sister" are inserted after "sister"; the words "children of such deceased spouse and the descendants thereof, and if none, then to," are inserted. In the second line of subdivision 8, the word "issue" is substituted for "kindred," and the subdivision amended in accordance with the urgent request of Judge Gray of the Supreme Court Commission to overcome such cases as Estate of McCauley, 138 Cal. 546.
1388. The amendment consists in declaring that if an illegitimate child has been legitimated, his estate on his death is succeeded to as if he were born in wedlock.
1395. The change consists in the substitution of the words "other heir" for "other lineal descendants," and in the substitution of "heirs" for "issue."
1399. The change consists in the substitution of the words "other heir" for "other lineal descendant" before "receiving," and in the substitution of "heirs" for "issue" after "leaving."
1405. The change consists in the substitution of the words "superior court" for "district court" before "or," and in the substitution of the words "he appears in the court in which such information was filed and asks for a judgment or order entitling him thereto." in place of the words "proof to the satisfaction of the state comptroller and treasurer be produced that he is entitled to succession thereto." The design of the amendment is to require the proof of the right to succession to be made in court instead of vesting the controller and treasurer with power to determine the question.
1406. This section is recast to conform to the proposed amendment to the last section.
1409. This is a new section corresponding to section 1314.
1468. This is a new section, and is designed to remove any doubt that covenants of the kind mentioned therein run with the land.
1624. The change consists in the addition of subdivision 7. The cases in which it is sought to establish by parole evidence alleged agreements to provide for a person by will are becoming so numerous as to warrant the assumption that the reasons inducing the original enactment of the statute of frauds apply with especial force to agreements of this class and that they ought to be brought within that statute.
1625. The change consists in the omission of the word "oral" before "negotiations."
- 1858, 1858a, 1858b, 1858c, 1858d, 1858e, 1858f. The statute of 1857-8, page 949, relating to warehousemen's and wharfingers' receipts, is codified in the above sections.
1865. The section is amended to incorporate therein the provisions, upon the same subject, of sections 3136, 3137, and 3138 of the Political Code.
1871. The section is amended to incorporate therein the provisions of sections 3139, 3140, and 3141 of the Political Code.
1929. The change consists in the substitution of the words "want of ordinary care" for "ordinary negligence."
1930. The change consists in the substitution of the words "he is liable to the letter for all damages resulting from such use, or the letter" in place of the words "the letter who is responsible for its safety during such use in all events, or."
1932. The change consists in the substitution of the words "want of ordinary care" for "ordinary negligence."
2161. The change consists in the insertion of the words "or telephone" after "telegraph" in two places, thus making the section applicable to both telegraph and telephone companies.
2180. The change consists in the substitution of the word "need" for "may." The present section would seem to prohibit a carrier by stage from receiving more than sixty pounds of luggage, wherein it was manifestly intended only to relieve him, at his election, from receiving a greater amount.
2195. The change consists in the substitution of the words "want of ordinary care" for "ordinary negligence."
2236. The change consists in the addition of the words "and for the value of its use" after "events."
2334. The change consists in the substitution of the words "want of ordinary care" for "ordinary negligence."

CIVIL CODE—Continued.

SECTION.

2541. The change consists in the addition of the clause following "mortgagee," and is designed to authorize a mortgagee in whose favor insurance is effected, to perform for the mortgagor any acts to be performed by him, with the same effect as if performed by the mortgagor.
2903. The change consists in the addition of the clause after the word "foreclosed." The design of the amendment is to state and apply the rule of equity in such cases, it being feared that the declaration of a similar rule in section 2904, and its omission in this section might lead to doubt.
2913. The change consists in the substitution of the word "value" for "a good consideration," after "for."
2973. This section merely declares the law already existing upon the subject. It is deemed proper to have the same expressed in the Code.
3061. The statute of 1885, page 109, concerning liens in favor of persons working on threshing machines, is codified in this section.
- 3062, 3063, 3064. The statute of 1891, page 90, is codified in the above sections.
3065. So much of the statute of 1877-8, page 747, as amended in 1880, page 38, and 1887, page 53, relating to loggers' liens, as is deemed necessary to be preserved, is codified in the above section.
3131. The change consists in the insertion of the words "or his agent" after "holder." The design of the amendment is to conform the section in this respect to section 3186.
3176. The change consists in the insertion of the word "cannot" after "residence," to correct a manifest error.
3197. The change consists in the omission of the words "or other good consideration," as they occur after "value." The presence of these words implies that a consideration other than "for value" may support a promise in writing to accept a bill. Such is not intended to be the law.
3235. The change consists in the substitution of the word "a" for "any" before "person"; in the omission of the words "but in any of the other states west of the Rocky Mountains" after "state"; in the omission of the third subdivision; and in the renumbering of the fourth subdivision rendered necessary thereby. As it now stands the section divides for its purposes that part of the United States not included within this state, into two parts, viz: the states west, and the states east, of the Rocky Mountains, thus apparently ignoring the states now existing situated partly on each side of those mountains. It has seemed best to abolish the distinction altogether and to provide a uniform rate of damage for all the states, irrespective of their position with reference to those mountains.
3294. The change consists in the substitution of the words "express or implied" for "actual or presumed," and in the substitution of the words "the plaintiff, in addition to the actual damages, may recover," in place of the words "the jurors, in addition to actual damages, may give." As the section now stands it appears to apply to jury trials only. This, of course, was not the intention of the legislature.
- 3346a. The new section incorporates into this Code the principle now declared in section 3344 of the Political Code.
3366. The change consists in the substitution of the words "as provided by the laws of this state," in place of the words "in the cases specified in this title and in no others." The purpose is to enlarge the scope of the section.
3451. The change consists in the insertion of the words "or creditors or to some other person or persons in trust for such particular creditor or creditors," after "creditor." The rule stated in the section as amended by the addition of the clause above quoted is the rule heretofore enforced in this state (Lawrence vs. Neff, 41 Cal. 566; Hendley vs. Pfister, 39 Cal. 283; Priest vs. Brown, 100 Cal. 623); but some doubt has been cast upon the subject by the later case of Sabachi vs. Chase, 108 Cal. 81.

CODE OF CIVIL PROCEDURE.

SECTION.

1208. This is merely a codification of the provisions concerning foreclosure of liens in the statutes of 1873-4, page 499, and 1901, page 285, relating to cruelty to animals, the penal features whereof have already been codified into the Penal Code and the civil features into the Civil Code.
1527. By some unaccountable mistake the present section 1639, which concerns sales of personal property, is placed in the wrong chapter, to wit: that entitled "Accounting and Settlement by Executors and Administrators." It is, therefore, repealed, and a new section, 1527, containing exactly the same provisions as the old section 1639, is inserted in the proper chapter, to wit: that concerning "Sales of Personal Property."
1579. The only change consists in the substitution of the word "ten" for "five," to make this section correspond with the present form of section 718 of the Civil Code, which was amended in 1903. Whoever amended the latter section at the last session of the legislature forgot to amend this section of the Code of Civil Procedure to correspond with it.
1639. This is a new section, the matter in the present section 1639 having been transferred to section 1527. The new section authorizes the personal representatives of a deceased executor or administrator to present and have settled the account of such deceased. At present there is no way of settling such accounts except by suit in equity, which is expensive, unnecessary, and less expeditious than the mode proposed.

PENAL CODE.

7. The purpose of the amendment is to make the section conform to the corresponding sections of the Civil Code and of the Code of Civil Procedure. The changes consist in the addition of the words "county includes city and county"; of the words "and typewriting"; and of the clause "*provided, that when a signature is made by mark it must, in order that the same may be acknowledged or serve as the signature to any sworn statement, be witnessed by two persons who must subscribe their own names as witnesses thereto.*" The above changes make the above section conform to the corresponding subdivision in section 17 of the Code of Civil Procedure and in section 14 of the Civil Code. The definitions of "night-time" and "day-time" are added in subdivision 13, following the definitions in sections 450 and 463 of this Code, which confined the definitions to the chapters in which they occurred. The word "canal-boat" is printed "canals, boats," in the official Statutes of 1873-4, page 421, amending the section, and is hereby corrected to conform to the manifest intention of the statute, and to the original form of the section as enacted in the Code of 1872. Subdivision 20 is also added to correspond with a like provision in the other Codes.
27. The amendment consists of a recasting of subdivision 2, designed to make it punishable in this state to embezzle money in another state and bring the money embezzled or some part of it into this state. The section as it now stands authorizes the conviction and punishment of persons committing larceny or robbery outside the state, who bring the property stolen into this state, but does not extend to the case of embezzlement.
42. The amendment conforms the section to section 21 of the Purity of Elections Act (Stats. 1893, p. 12).
- 42a. This is a codification of section 22 of the Purity of Elections Act (Stats. 1893, p. 12).
45. Two clerical errors are corrected. The word "illegally," before "polled," is changed to "legally"; and the word "either" is omitted after "elector," and inserted between "ballot-box" and "before."
46. Section 24 of the Purity of Elections Act (Stats. 1893, p. 12) is here codified.
47. Section 28 of the Purity of Elections Act (Stats. 1893, p. 12) is here codified.
49. Section 42 of the Purity of Elections Act (Stats. 1893, p. 12) is here codified.
- 49a. This is the last sentence of section 1142 of the Political Code, the matter being of a nature which has an appropriate place in this Code.
50. This is a codification of the first sentence of section 27 of the Purity of Elections Act (Stats. 1893, p. 12).
51. This is a codification of the second sentence of section 27 of the Purity of Elections Act (Stats. 1893, p. 12).
- 54a. Section 20 of the Purity of Elections Act (Stats. 1893, p. 12) is here codified.

PENAL CODE—Continued.

SECTION.

- 54b. Section 19 of the Purity of Elections Act (Stats. 1893, p. 12) is here codified.
- 55a. This is a codification of the statute of 1897 to protect candidates for public office (Stats. 1897, p. 53).
57. The change consists in the insertion of the word "seven" in place of "fourteen," conforming the section to section 25 of the Purity of Elections Act (Stats. 1893, p. 12).
- 57a. This is a codification of section 26 of the Purity of Elections Act (Stats. 1893, p. 12).
59. This is a codification of section 41 of the Purity of Elections Act (Stats. 1893, p. 12).
62. The change consists in the insertion of the words "the provisions of chapter eight of title two of part three," in place of "section one thousand one hundred and ninety-one." Section 1191 does not treat of the form of election ballots, and the reference is therefore inapplicable.
- 63b. This is a codification of the statute of 1873-4, page 297.
- 74a. This is a codification of the provisions of the statute of 1871-2, page 951, with the following changes: the word "accepts" is inserted in place of "keeps," and the phrase "for his own use" is added after "retains."
76. The change consists in the addition of the clause "or willfully and unlawfully withholds or detains from his successor, or other person entitled thereto, any money or property in his custody as such officer." The section as it now stands makes it punishable only for an officer to retain writings or records appertaining or belonging to his office, but does not extend to the manifestly graver offense above noted.
100. The change consists in the omission of the word "said" before "superintendent," the insertion of the word "chapter" in place of "act," and the omission of the phrase "in any court of competent jurisdiction," it being entirely unnecessary.
105. The present section is open to the objection that the punishment prescribed is unequal, not proportionate to the offense, and its constitutionality on that account has been sometimes doubted. The cases of *State vs. Lewin* (Kan.), 37 Pac. Rep. 168; *Barbier vs. Connolly*, 113 U. S. 27; *Coon Hing vs. Crowley*, 113 U. S. 703; *Haves vs. Missouri*, 120 U. S. 68; *Home Ins. Co. vs. N. Y.*, 134 U. S. 594; *Pembina Mng. Co. vs. Penn.*, 125 U. S. 181; *Crowley vs. Christenson*, 137 U. S. 86; *Yick Wo vs. Hopkins*, 118 U. S. 358; *Civil Rights Cases*, 103 U. S. 3, are cited in behalf of this view. The amendment is strongly urged by the district attorney of Marin county.
109. The amendment is designed to make it punishable to assist the escape of inmates of reformatories, and to accomplish this end the following insertions have been made: The words "or jail, or reformatory," the words "or any person," and the words "or jail, or public training school, or reformatory."
110. The change is in line with the proposed change in section 109. The words "jail, public training school, or reformatory" are inserted, and the words "or inmate" are added after "prisoner."
111. The change consists in the insertion of the words "and of the execution of the sentence of such convict," after "convict," and substitution of the words "judge of the superior court of such county" for "superior judge of said county." It is manifestly proper that the county should be recouped for the expenses covered by the amendment.
- 118a. The object of this new section is to punish those who instigate litigation by making false affidavits respecting the facts to which they will testify, and is made necessary by the decision of the Supreme Court in *People vs. Simpton*, 133 Cal. 367.
119. The change consists in the substitution of the words "two sections" for "section." The change is made necessary by the addition of section 118a to the Code.
121. The matter following the word "manner" is new. The object of the amendment is to cut off the defense sometimes successfully made in perjury cases, that the defendant did not in fact go before the officer and take oath, it being at the same time admitted that he sent the affidavit to the officer with the intention that he should certify to it, and with the intention that it should be used as valid.
124. The change consists in the addition of the word "affidavit." The purpose is of the same character as that of the amendment to the preceding section.
129. The object of the section is similar to that of the proposed amendment to section 121. (See *People vs. Simpton*, 133 Cal. 367.)
- 159a (159½). The change consists in the substitution of the word "annulment" for "nullity," and the substitution of "section" for "act."
- 161a. This section, which is a new one, is self-explanatory.

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SECTION.

165. The word "public" is inserted before the word "corporation," as the section was undoubtedly intended to apply to bodies and authorities of a public character. The words "of which is afterward to be considered by" are inserted. The words "upon any understanding that his official vote, opinion, judgment, or action shall be influenced thereby, or shall be given in any particular manner or upon any particular side of any question or matter, upon which he may be required to act in his official capacity," were not in the report of the original Code Commission, but were inserted as a committee amendment two years ago. The added words "in addition to said punishment" were likewise inserted by said committee. The first two changes are code revision; the last two changes are, in a measure, new legislation, but we think them good.
168. "Presentment" is stricken out and "information" inserted in its place, for the reason that under the Constitution of 1879 there is no prosecution by presentment, that portion of this section (originally passed in 1872) having been superseded by the Constitution.
171. The scope of the section is broadened by the insertion of the words "jail or reformatory in this state," and the words "literature or reading matter."
- 171a, 171b, 171c, 180a. Sections 171a, 171b, and 171c contain the matter now contained in section 180a, and also a codification of the provisions of the statute of 1895, page 92.
172. The amendment consolidates the provisions of the present section 172 with a codification of the statutes of 1873-4, page 12; 1880, page 80, and 1895, page 161, relating to the state university, soldiers' homes, and state capitol. There is no new legislation in the section.
- 178, 179. These sections were, in the Circuit Court of the United States, Ninth Judicial District, explicitly held to be in violation of the Constitution of the United States, on May 22, 1880. (In re Parrott, 5 Pac. Coast L. J. 161.) They are now obsolete. An ordinance in somewhat similar terms was also held unconstitutional in *Ex parte Kerboch*, 85 Cal. 274.
207. Two amendments: inserting the words "or into another part of the same county," and inserting beginning with the word "and" and ending with the word "thereof." The advisability of the first change is shown by the decision of the Supreme Court in *Ex parte Keil*, 85 Cal. 309, where it was held that the forcible removal of a person from San Pedro, Los Angeles county, to Santa Catalina island, in the same county, did not constitute kidnaping. These changes are asked for by the District Attorneys' Association.
- 214, 218, 219. Section 218 has been broken up into three sections.
 In view of the criticism passed by the Supreme Court in the case of *People vs. Thompson*, 111 Cal. 242, upon section 218, and the suggestion of that court that the section be revised, there have been taken out of that section the provisions regarding robbery and the same have been amplified and made a new section, numbered 214, to be placed in Chapter IV, of Title VII, of Part I. In the new section the punishment is not prescribed as death or imprisonment for life at the option of the jury, as in section 218; but the grade of the offense is fixed at felony simply, it having been found that the severity of the punishment results in failure to secure convictions.
 Section 218 as amended provides only for attempted wrecking or derailment of railroad trains, and fixes the grade of the offense as felony simply, the matters formerly in the section regarding an accomplished or consummated wrecking or derailment being left to section 219, and the provisions regarding robbery being provided for in section 214.
 Section 219 contains the matter now in section 218 regarding an accomplished or consummated wrecking or derailment. The punishment is left at death or imprisonment for life, at the option of the jury, as now provided in section 218.
 In short, these three sections split up section 218 in the manner suggested by Judge Garoutte in *People vs. Thompson*, 111 Cal. 242, and modify the penalty of train-wrecking where no death has occurred, so as to preclude failures to convict on account of the severity of the penalty.
- 266a, 266b, 266c, 266d, 266e, 266f. The statute of 1893, page 217, regarding the compulsory prostitution of women, is codified in the above-named sections. The penalties here set forth in sections 266d, 266e, and 266f are those of a felony instead of the various penalties set forth in the corresponding sections of the statute codified.
- 266g. This section codifies the statute of 1891, page 285, regarding the placing and keeping of married women in houses of prostitution.
- 269a, 269b. The act to punish adultery (Stats. 1871-2, page 380) is codified in the two sections above named.

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SECTION.

270. The change consists in the omission of the words now following the word "excuse," "to perform any duty imposed upon him by law." They are clearly without signification as employed in the section.
- 271a. The penal section of the statute of 1873-4, relating to the care of orphan and abandoned children, is codified in this section.
- 272, 273, 273a, 273b, 273c, 273d. The two statutes, one of 1877-8, page 812, and the other of 1877-8, page 813, relating to children, are codified by an amendment to section 272 and by the addition of sections 273, 273a, 273b, 273c, and 273d.
- 273e. The matter now in section 1389, which incorrectly stands in a chapter entitled "Dismissal of the Action," is put into a new section designated as 273e, and is put in its proper chapter, with the other sections relative to children, and section 1389 accordingly repealed.
302. The change consists in the omission of the word "noise" before the word "profane," it being manifestly an error in the statute, as it occurs later in the section with a qualification.
303. The section is in conflict with section 18 of Article XX of the Constitution, which provides that "no person shall, on account of sex, be disqualified from entering upon or pursuing any lawful business, vocation or profession." (See *Ex parte Maguire*, 57 Cal. 604.)
306. This section is explicitly held to be in conflict with section 18 of Article XX of the Constitution in *Ex parte Maguire*, 57 Cal. 604, 609.
- 310½. This section was explicitly held to be unconstitutional in *Ex parte Jentzsch*, 112 Cal. 468.
315. The change consists in the addition of the matter following the semicolon. The new matter is taken from the statute of 1873-4, page 84, and makes the reputation of the house evidence of its character and of that of the women resorting to it.
343. The change consists in the insertion, after the word "sales," of the words "or appointed by the sheriff of the county, or the head of the police department of any city, city and county, or town, to inspect such registry, or examine such articles on account of sales." The change is suggested and advocated by the sheriffs' organization of this state.
- 347a. This is a codification of the existing statute (1880, page 102).
- 349a. This is a codification of the statute of 1877-8, page 17.
360. The change consists of the clause making it criminal to solemnize a marriage without being first presented with a marriage license, and the clause making it criminal to fail to file for record the marriage license and the certificate of marriage. The last of these amendments, besides being otherwise proper, is necessary in order to give effect to the amendment to section 79a of the Civil Code, which provides that a license must be procured in every case, and regardless of whether the parties are, or are not, members of some particular religious denomination having, as such, some peculiar mode of celebrating marriage.
- 369a. This is a codification of the statute of 1890, page 183.
- 369b. This is a codification of the statute of 1877-8, page 969.
- 369d, 369e, 369f, 369g. Codification of police regulations in the statute of 1877-8, page 969.
374. The change consists in the substitution of the word "crematory" for "cemetery."
- 375a. This is a codification of sections 1, 2, 3, and 4 of the statute of 1887, page 110.
376. The change consists in the omission after the word "officer," of the words "arriving in the port of San Francisco," thus making the statute general.
383. The amendment is a consolidation of the present section 383 with the statute of 1895, page 71. Section 4 of the statute has, however, been omitted as unnecessary.
- 383a. A section of the statute of 1890, page 25, is here codified.
384. The amendment designates the punishment, and in this respect conforms the section to the statute of 1871-2, page 96, on the same subject, and inserts, after the word "lands," the words "not his own," to conform the section to what was obviously the intent of the legislature.
- 384a. This is a codification of the statute of 1891, page 473, concerning the subject set forth in the section.
- 384b. This is a codification of that part of section 5 of the statute of 1875-6, page 408, respecting the leaving of camp fires unextinguished.
- 384c. This is a codification of sections 4 and 5 of the statute of 1875-6, page 408, respecting the wounding of animals while hunting upon the lands of another.
- 397b. This is a codification of the act of the last session (Stats. 1903, p. 310), respecting the sale of intoxicating liquors to children.

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SECTION.

- 400, 401. There being two sections numbered 400 and 401, the one relating to the encouragement of suicide has been numbered 401.
- 401a. This is a codification of the statute of 1875-6, page 759, concerning lodging-houses and sleeping apartments.
- 402a (402 $\frac{3}{4}$). Section 402 $\frac{3}{4}$ for purposes of convenience is renumbered 402a.
- 402b (402 $\frac{1}{2}$). Section 402 $\frac{1}{2}$ is renumbered 402b.
- 402c (402 $\frac{3}{4}$). The change consists in the renumbering of section 402 $\frac{3}{4}$ to 402c.
- 402d. This is a codification of the statute of 1893, page 302.
420. This a codification of the statute of 1887, page 147.
470. The change consists in the insertion of the words "or of a fictitious person," in the beginning of the section. The purpose of the amendment is to make the forging of the name of a fictitious person, or knowingly signing the name of another, criminal if done with intent to defraud.
474. The change consists in the insertion of the words "or telephone" after "telegraph."
481. The change consists in the insertion of the words "or steamship" after "railroad," and "or vessels" after "cars."
482. The words "or steamship" are twice inserted after "railroad."
496. The change consists in the omission of the words "or both" after "months." Obviously it was not the intention of the legislature that the same offense should be punishable by imprisonment in both the state prison and the county jail.
497. The object of the amendment is to enlarge the scope of the section to include cases of embezzlement, and to accomplish this purpose the words "or embezzle" have been inserted after "steals," the word "embezzled" has been inserted after "stolen," and the words "or embezzlement" have been inserted after "larceny."
512. The change consists in the insertion of the words "or an indictment found by a grand jury," after "magistrate."
513. The change consists in the insertion of the words "or an indictment found by a grand jury," after "magistrate."
514. The amendment substitutes "in" for "under" before the word "this," thus making a person convicted of embezzlement ineligible to any office in this state, whether it be a state office or not.
529. The change consists in the insertion of the words "in either his private or official capacity," after "another," the amendment being designed with the purpose of changing the construction put upon this section in *People vs. Knox*, 119 Cal. 73, where it was held that the section did not apply to a case where a person falsely assumes an official character.
530. With the same object in view as in the amendment to the preceding section, the words "in either his private or official capacity" have been inserted after "another."
532. The amendment is intended to make it criminal to procure the labor or services of another, or to defraud him of real property, by representations known to be false. With respect to real property, this changes the rule announced in *People vs. Cummings*, 114 Cal. 437. The change consists in the addition of the words "whether real or personal," after "property."
537. There are two sections numbered 537. The one regarding the removal of mortgaged chattels is repealed, the matter contained in it being sufficiently provided for in section 538.
- 537a (537 $\frac{1}{2}$). Section 537 $\frac{1}{2}$ is renumbered 537a, and the word "valuable" is substituted for "legal," before "consideration." Section 2 is omitted because not properly a part of the Penal Code.
- 537b (537 $\frac{3}{4}$). Renumbered, but not amended.
538. The amendment extends the operation of the section to cases where personal property is taken, removed, or driven from the county in which it is mortgaged with the intention of defrauding the mortgagee. The change consists in the addition of the words "with intent to defraud the mortgagee, his representatives or assigns, takes, drives, carries away, or otherwise removes or permits the taking, driving, or carrying away, or other removal of the mortgaged property, or any part thereof, from the county where it was situated when mortgaged, without the written consent of the mortgagee, or who."
- 538a (538). Section 538 is renumbered 538a.
- 538b (543 $\frac{1}{2}$). This section consists of the matter now in section 543 $\frac{1}{2}$. The change is made by placing the matter in a section in the proper chapter. By some inadvertence the legislature placed it in the chapter providing for the punishment of persons fraudulently fitting out and destroying vessels.
564. The amendment is intended to incorporate in the section such provisions of the statute of 1877-8, page 695, as are not already sufficiently expressed therein. The statute, however, is limited to corporations whose stock is

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SECTION.

504.—Continued.

- listed on the stock board or exchange. The amendment omits this limitation, for the reason that its constitutionality is doubtful.
501. The change consists in the insertion of the words "or telephone, or any other line used to conduct electricity."
- 503a. This is a codification of the statute of 1875-6, page 32, relating to the protection of lumber manufacturers.
507. The amendment consolidates the present section 507 with section 6 of the statute of 1873-4, page 499, as amended 1901, page 285, for the more effectual prevention of cruelty to animals.
- 507a, 507b, 507c, 507d, 507e, 507f. These sections are a codification of sections 7, 8, 9, 11, 12, and 13 of the last-named statute, as amended 1901, page 285.
- 507g. The statute of 1873-4, page 228, to prevent stallions running at large, and of 1887-8, page 437, respecting buck goats, and of 1871-2, page 63, to provide for the keeping of stallions, are codified in this section, and makes the law concerning the running at large of stallions in Sacramento and Mono counties, by extending its provisions, applicable to the state at large.
- 508a. This is a codification of the statute of 1897, page 37, for the protection of Antwerp messenger or homing pigeons.
509. The statute of 1875-6, page 287, to protect sea-gulls in the neighborhood of Santa Monica, and the statute of 1889, page 205, to prevent the destruction of blue cranes, are codified in this section.
- 509a. This section is a codification of section 10 of the statute of 1873-4, page 499, as amended 1901, page 285, for the prevention of cruelty to animals.
- 509b, 509c. Sections 16 and 17 of the statute of 1873-4, page 499, for the more effectual prevention of cruelty to animals, are codified in the above sections.
- 509d, 509e. Codifying the statute of 1901, page 287.
600. The change consists in the insertion of the words "or telephone," before "poles."
601. The present section 601 is amended to conform it to section 8 of the statute of 1887, page 110, to protect life and property against the careless and malicious use or handling of dynamite and other explosives.
602. The change consists in the addition of the eighth and ninth subdivisions. The eighth subdivision is a codification of the statute of 1871-2, page 384, and the ninth is a codification of part of section 3 of the statute of 1875-6, page 408, to prevent hunting upon enclosed lands.
603. The section as it now stands declares that certain injuries to trees on the lands of the United States, including the cutting of them, do not constitute public offenses. This is a proper subject for regulation by the United States, and it is obviously improper for the state to undertake to legalize trespasses upon, or injuries to, the public lands of the federal government.
609. The amendment incorporates the provisions of the statute of 1873-4, page 619, for the protection of buoys and beacons.
619. The change consists in the insertion of the words "or telephonic," after "telegraphic."
620. The change consists in the insertion of the words "or telephonic," after "telegraphic."
621. The change consists in the insertion of the words "or telephonic," before "office."
638. The change consists in the insertion of the words "or telephone," before "office."
639. The change consists in the insertion of the words "or telephone," before "office."
640. The change consists in the insertion of the words "or telephone," before "line" and before "office."
641. The change consists in the insertion of the words "or telephone," before "act."
- 653b. There are now in this Code two sections each numbered 654. The change consists in renumbering the one approved March 30, 1874, to read 653b.
- 653c. This is a new section, codifying, word for word, the eight-hour law passed at the last session (Stats. 1903, p. 119).
- 653d. This is a new section, codifying the statute of 1871-2, page 951, to protect wages of labor, inserting, however, the words "for his own use," to make same conform to intention of original act.
654. There are now in this Code two sections each numbered 654. The change consists in renumbering the one approved March 30, 1874, to read 653b.
666. The amendment consists in the substitution of the word "five" for "ten." At the last session of the legislature, sections 666 and 667 were changed, the former being amended, and the latter repealed. Through a mistake in copying the proposed amendment to section 666, the section, as it now

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SECTION.

666.—Continued.

- stands, leaves a large class of cases unprovided for. The word "ten," on the fourth line of subdivision 1, has been changed to "five," so that where the punishment for a first conviction would be six, seven, eight, nine, or ten years, some penalty shall attach; for a second conviction for an offense punishable, say by seven, or even ten years, entails no penalty. Judge Carroll Cook called the attention of the Commissioner to the error, and requested the amendment.
777. The amendment declares that the jurisdiction of any public offense not otherwise specially provided for is within the county where it was committed. Although this has always been understood to be the law, the Code seems to contain no express declaration upon the subject. The change consists in the addition, after the words "United States," of the words "and except as herein otherwise provided, the jurisdiction of any public offense is in the county wherein it is committed."
- 778a. The section is designed to provide for the punishment of persons who in this state do an act culminating in the commission of a crime in another state.
- 778b. The object of this section is to provide for the punishment of persons who, being out of the state, encourage the commission of crimes within this state, and are afterwards found within this state.
784. The change consists in the substitution of the word "eighteen" for "twenty-five," after "of"; in the substitution of the word "eighteen" for "sixteen," after "of"; and in the insertion of the word "brought" in place of "taken."
789. The change consists in the insertion of the words "or embezzling," after "stealing," and of the words "or embezzled," after the word "stolen."
840. The purpose of the amendment is to authorize an officer to arrest without a warrant at night-time for a misdemeanor committed in his presence. The change consists in the addition of the words "except when the offense is committed in the presence of the arresting officer."
872. The change consists in the substitution of the word "complaint" for "deposition," and in the omission of the words "and committed to the sheriff of the county of blank," at the end of the section.
882. The change consists in the insertion of the words "and such deposition may be used upon the trial of the defendant, except in cases of homicide, under the same condition as mentioned in section 1345," after the word "discharged."
- 907, 908, 909, 910. These sections purport to authorize the court, if an offense is committed during a term of court, but after the grand jury has been discharged, to summon another grand jury. There are now no "terms of court," and any necessity which may arise after one grand jury has been discharged can be met by the drawing of another.
915. The change consists in the omission of the words "either by presentment or," after "court." The change is made for the reason that grand juries no longer have authority to prefer presentments.
916. This section relates to and defines presentments by grand juries, and, as they no longer have authority to prefer a presentment, the section is superfluous and misleading.
919. The change consists in the omission of the words "for the purpose of either presentment or indictment," after "charge." The change is made because grand juries have no longer authority to prefer presentments.
923. The change consists in the substitution of the word "or," in place of "and," between "willful" and "corrupt."
925. The statute of 1871-2, page 510, authorizing the grand jury or district attorney to require the attendance of an interpreter, is codified in the last sentence.
- 931, 932, 933, 934, 935, 936, 937. These sections compose Chapter IV of Title IV of Part II of the Penal Code. They relate solely to the proceedings after finding a presentment, and since the adoption of the Constitution of 1879 have been inoperative.
954. The amendment is designed to authorize an offense to be set forth under different counts, and to excuse the prosecution from electing between them. Justice Shaw of the Supreme Court strongly urges the change.
968. This is the section as it existed prior to its repeal in 1880. It is believed that no good reason for such repeal existed.
1001. The change consists in the insertion of the words "except as provided in section 954," after "warden." The object of the amendment is to make this section conform to the proposed change in section 954.
1008. The purpose of the amendment is to authorize, where a demurrer to an indictment is sustained, the resubmission of the charge to the grand jury which found the original indictment, if it has not been discharged. This amendment changes the rule announced in *Terrill vs. Superior Court*

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SECTION.

1008.—Continued.

- (60 Pac. Rep. 516). To accomplish this, the words "the same or" have been inserted before the word "another."
1020. The change consists in the substitution of the word "one" for "that," before "specified."
1025. This is the section as it existed prior to its repeal in 1880. By such repeal no provision was left for any plea to a charge of former conviction, and it is believed this should be provided for in the Code.
1033. The change consists in the omission of the word "first," after "pending," and of the words "where the action is pending. Second—On the application of the district attorney on the ground that from any cause no jury can be obtained for the trial of the defendant in the county where the action is pending," after "county," the provision relative to a change of the place of trial in a criminal action on application of the district attorney having been held unconstitutional in *People vs. Powell*, 87 Cal. 348.
1034. The design of the amendment is to conform this section to the amendment to the last section. The change consists in the insertion of the words "for removal," after "application"; in the omission of the words "or of the district attorney, as the case may be," after "defendant"; in the insertion of the word "district," after "the"; in the omission of the words "of the adverse party," after "attorney"; and in the insertion after "application," of the sentence "At the hearing the district attorney may serve and file such counter affidavits as he may deem advisable."
- 1103a. This section is composed of matter taken from section 1968 of the Code of Civil Procedure.
1108. The amendment consists in the substitution of the word "eighteen" for "twenty-five." The purpose is to conform the section to the provisions of section 266.
1110. The amendment consists in the insertion of the word "labor" before "money," and in the substitution of the words "or property, whether real or personal," in place of "personal property," thus conforming the section to the amendment to section 532.
1147. The change consists in the omission of the words "at the same or another term," after "tried," because there are now no terms of court.
- 1171, 1174. The design of the amendment to these sections is to bring about as far as possible an avoidance of the delay now so common in getting criminal cases to a hearing in the Supreme Court, and to require bills of exceptions in criminal cases to be settled as expeditiously as is compatible with the circumstances of the case. The phraseology of the present section is changed in certain respects to more clearly express its purpose. The clerk is required, upon receipt of the draft, to note such receipt thereon; and the judge, upon receipt thereof, is required to immediately designate a time for settlement and have the parties notified thereof, if not present. The time so fixed cannot be changed for the convenience of a party, except upon good cause shown by affidavit.
1176. The purpose of this amendment is to correct imperfections and confusion in the language of the present section, and to more clearly point out the duty of the judge in noting his action upon instructions requested by the parties.
1182. The change consists in the addition of the words "and the order granting or denying the same must be immediately entered by the clerk in the minutes" after "judgment," and is designed to conform the section to the present practice.
1185. The change consists in the addition of the words "when determined, the order must be immediately entered by the clerk in the minutes," after "judgment," and is designed to conform this section to the present practice.
1186. See note to section 1185.
1187. The purpose of this amendment is to give the same effect to an order of the court made on its own motion under section 1186 as section 1187 now gives to an order made on motion of the defendant.
1191. The change consists in the omission of the words "if the court intend to remain in session so long; but if not, then at as remote a time as can reasonably be allowed," after "verdict," because the courts are always open.
1201. The change consists in the substitution of the words "a state hospital for the care and treatment of the insane" for "lunatic asylum," after "to."
1206. The amendment makes the section applicable whether the fine was imposed with or without the alternative of imprisonment. (See *People vs. Brown*, 113 Cal. 35.)
1207. The design of the amendment is to conform the section to the amendment to section 1176. To effect this the words "and the certified transcript of the charge of the court" are inserted after "thereon."

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SECTION.

1214. The amendment makes the rule of the section applicable, though the punishment include imprisonment as well as fine. (See *People vs. Brown*, 113 Cal. 35.)
1221. The amendment is designed to permit the warden to act without procuring the concurrence of the judge of the superior court, and requires the district attorney to act upon the suggestion of the warden by filing a petition and taking proceedings thereunder to ascertain whether the defendant is insane.
1222. The change consists in the substitution of the word "hearing" for "inquisition."
1223. The amendment requires the verdict to be entered upon the minutes, and the court to thereupon enter an order for the confinement of the defendant in a hospital if he is found to be insane.
1224. The amendment provides for the action to be taken when the defendant recovers his reason, and consists in striking out all of the words following "execution," and in substituting new provisions in lieu thereof.
1225. The amendment conforms the section to the proposed change in section 1221.
1226. The change consists in the insertion of the words "certified copy of the finding and certificate," and in the addition of the provision relative to the Governor's issuing his warrant upon receiving a certificate from the warden.
1227. The change consists in the addition of the last sentence, which provides that no appeal can be taken from the order fixing the time for the execution of the judgment.
1235. The amendment is designed to make the section conform to Article VI, section 4, of the Constitution, which provides that the Supreme Court has jurisdiction "in all criminal cases prosecuted by indictment or information in a court of record, on questions of law alone," it having been held (in *People vs. Jordan*, 65 Cal. 644) that it has jurisdiction in all such cases, and that if its jurisdiction by appeal is restricted to cases of felony, it would devolve upon it to establish some appropriate system of appellate procedure by which it could review all other convictions based upon an indictment or information.
1238. The change consists in the omission of subdivision G, because the court cannot make the order therein referred to, its action being limited to advising the jury to acquit; and if this advice is followed, an appeal is necessarily unavailing, because a defendant after his acquittal cannot be placed upon trial. (See *People vs. Stoll*, 28 Cal. Dec., p. 22.)
1240. The change consists in the omission of the words "or filed," after "entered."
1241. The change consists in the insertion of the words "by affidavit filed therein," after "thereof," the present section being entirely silent respecting the mode of proof.
1245. The change consists in the insertion of the words "the execution of the" before "judgment."
1264. The design of the amendment is to require a copy of the opinion of the Supreme Court to be certified to and sent to the clerk of the court below with the remittitur. The change consists in the insertion of the words "with a copy of the opinion of the court attached thereto," after "entry."
1305. The words "within twenty days after such entry in the minutes" are substituted for the words "before the final judgment of the court," after "time."
1306. The amendment is designed to conform the section to the amendment to section 1305, and the change consists in the substitution of the words "twenty days from the entry upon the minutes, as provided in the last section" for the words "the adjournment of the court," after the word "after."
1307. The change consists in the insertion of the words "at the end of thirty days, unless the court has before that time discharged the forfeiture," in place of the words "immediately after the adjournment of the court."
- 1335, 1336, 1337, 1338, 1339, 1340, 1341. By the amendment to the above sections, the provisions of the statute respecting the conditional examination of witnesses have been extended so far as may be constitutionally done, to the end that the prosecution, except in cases of homicide, may have the same privilege as the accused of taking conditionally the testimony of witnesses who are about to leave the state, or who are so sick and infirm as to afford reasonable grounds for apprehending that they will be unable to attend the trial. The proposed change is within the contemplation of that part of section 13 of Article I of the Constitution, which provides that "the legislature shall have power to provide for the taking, in the presence of the party accused and his counsel, of depositions of witnesses in criminal cases, other than cases of homicide, when there is reason to believe that the witness, from inability or other cause, will not attend the trial."
1370. The change consists in the substitution of the words "a state hospital for the care and treatment of the insane," in the place of "insane asylum."

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SECTION.

1372. The change consists in the substitution of the words "state hospital" for "asylum."
1373. The change consists in the substitution of the words "state hospital" for "asylum."
1387. Inserts in the section relating to an order for dismissal being a bar in cases of misdemeanor, a provision that where the order explicitly is made for the purpose of allowing an amended complaint to be filed, the order for dismissal shall not constitute a bar. This revision corrects a manifest abuse. The bill is earnestly urged by the district attorney of Napa county.
1388. The change consists in the insertion of the words "of a minor," after "prosecution," and in the insertion of the word "the" before "custody."
1389. The matter now in section 1389, which incorrectly stands in a chapter entitled "Dismissal of the Action," is put into a new section designated as 273e, and is put in its proper chapter, with the other sections relative to children, and section 1389 accordingly repealed.
1425. This section now contains the matter now in section 115 of the Code of Civil Procedure.
1427. The changes consist in the matter providing a mode for compelling a corporation to appear in response to a complaint accusing it of a misdemeanor.
1475. The change consists in the addition of the last sentence in subdivision 2. The purpose of the amendment is to prevent one who, after a hearing upon habeas corpus has been remanded to custody, from applying thereafter to the same or another superior court or judge, unless upon some ground not existing at the issuing of the prior writ, or unless upon some point of law not raised at the hearing upon the return of the prior writ.
1510. The amendment consists of the last two sentences. The matter thus added to the section is a codification of a part of the provisions of section 3 of the statute of 1871-2, page 403, as amended by the statute of 1875-6, page 379, respecting jurors summoned to act at coroners' inquests.
- 1511a. This section is a codification of section 6 of the statute of 1871-2, page 403, above referred to.
- 1511b. Section 7 of the statute last referred to is codified in this section.
1512. The change consists in the insertion of the words "or hold a post mortem examination thereon, or a chemist to make analysis of the tissues of the body of the deceased," after "body." This provision is taken from sections 1 and 2 of the statute of 1871-2, page 403, above referred to.
1513. The amendment consists of inserting the word "be" before the word "punished."
- 1514a. This is a codification of section 15 of the statute of 1871-2, page 403, relating to coroners.
1515. The change consists in the insertion of the words "and all recognizances taken by him," after the word "inquisition."
1541. The amendment consists in the omission of the word "together," after "annex"; in the omission of all of the section following "inventory," and in the substitution therefor of a provision to the effect that if the magistrate has not power to inquire into the offense, he must file the warrant and the deposition and return with the clerk of the court having power to so inquire.
- 1573 to 1588; 1590 to 1595. The above-named sections, which comprise Title I of Part III of the Penal Code, with the exception of the last sentence of section 1593, have been completely superseded by the Constitution of 1879 and the general statutes in pursuance thereof. The portion of section 1593 which is still in force has been incorporated into a bill to amend the statute of 1889, page 404, concerning the state prisons, so that it will be preserved, notwithstanding the repeal of these superseded and therefore useless provisions.
1603. The change consists in the substitution of the words "judge of the superior court" in place of "county judge," and in the substitution of the word "order" for "appointment."
1605. The change consists in the substitution of the words "judge of the superior court" for "county judge."
1615. This section is a codification of section 1 of the statute of 1883, page 280, to protect the public health.